

### REMARKS

Assignee appreciates the thorough examination of the present application as evidenced by the Final Office Action mailed November 22, 2010 (hereinafter "Final Action"). In response, Assignee has amended the pending claims to clarify that the user session is an existing user session and has made further amendments for improved readability. Claims 11, 12, 16, 29, 30, 34, 47, 48, and 52 have been canceled without prejudice or disclaimer. Assignee respectfully submits that the cited combination of references fails to disclose or suggest, at least, the recitations of independent Claims 1, 19, 37, and 55. Accordingly, Assignee submits that all pending claims are in condition for allowance. Favorable reconsideration of all pending claims is respectfully requested for at least the reasons discussed hereafter.

#### **All Pending Claims are Patentable**

Independent Claims 1, 19, 37, and 55 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 7,046,680 to McDysan et al. (hereinafter "McDysan") in view of U. S. Patent No. 7,185,070 to Paul et al. (hereinafter "Paul"). (Final Action, page 5). Independent Claim 1, as amended, recites:

A method of modifying quality of service for an existing user session in a network that comprises a regional access network that facilitates differentiated end-to-end data transport between a service provider and a customer premises network that includes customer premises equipment, comprising:

receiving a request at the service provider to change the quality of service associated with the existing user session; and

using application programming interface calls at the service provider to communicate with the regional access network to modify the quality of service associated with the existing user session. (Emphasis added)

Claims 19, 37, and 55 include similar recitations. According to the independent claims, a request is received at the service provider to change the quality of service associated with an existing user session. The Final Action alleges that the programmable access device 40 shown in FIG. 2 of McDysan corresponds to the service provider and cites col. 16, lines 59 – 64 along with Fig. 6 of McDysan as disclosing the request for changing quality of service associated with an existing user session. (Final Action, page 6). In sharp contrast to the recitations of

independent Claims 1, 19, 37, and 55, however, the cited passage from McDysan explains that the Resource Reservation Protocol (RSVP) can be used, "[f]or example, ...to request a path of specified bandwidth at a particular time." (McDysan, col. 16, lines 65 – 66). Thus, McDysan does not teach or suggest receiving a request for a change in bandwidth and/or quality of service for an existing user session, but instead teaches that a customer application may use RSVP to request a new network path with a particular bandwidth.

In response to this argument, the Final Action cites operations of the policy server 48 and external processor 42 shown in FIG. 2 of McDysan as describing receiving a request for a change in the quality of service associating with an existing user session. (Final Action, page 2). The language of the independent claims, however, states that the request is received at the service provider. The Final Action cites the programmable access device 40 shown in FIG. 2 of McDysan as corresponding to the service provider and the text cited at col. 14, lines 23 - 32 of McDysan does not appear to include any type of description of sending a request to the programmable access device 40. Rather, this text appears to explain that the programmable access device 40 may be configured in various manners for communication of packets.

The Final Action acknowledges that McDysan fails to disclose or suggest using application programming interface calls at the service provider to communicate with the regional access network to modify the quality of service associated with an existing user session, but alleges that Paul provides the missing teachings. (Final Action, page 6). In contrast to the recitations of independent Claim 1, however, Paul explains that an application programming interface 32 is used to implement quality of service negotiators that reside on a client application computer and a server application computer. (Paul, col. 4, lines 33 – 39; FIG. 1). Paul does not appear to include any description of using an application programming interface to communicate with a regional access network to modify quality of service associated with an existing user session. Moreover, Paul fails to remedy the deficiencies of McDysan described above with respect to receiving a request at a service provider to change the quality of service associated with an existing user session.

For at least the foregoing reasons, Assignee respectfully submits that independent Claims 1, 19, 37, and 55 are patentable over McDysan and Paul, and that claims depending therefrom are patentable at least by virtue of their depending from an allowable claim.

**Various Dependent Claims are Separately Patentable**

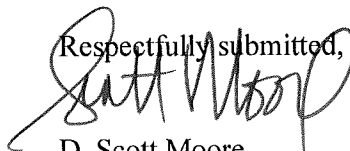
Claims 2 - 18, 20 - 36, and 38 - 54 also stand rejected as unpatentable under 35 U.S.C. § 103(a) over McDysan in view of Paul. (Office Action, page 2). These claims depend from independent Claims 1, 19, and 37, respectively, and are allowable for at least the reasons discussed above. Many of these claims, however, are separately patentable. For example, as discussed above, McDysan and Paul do not disclose receiving a request for a change in quality of service for an existing user session. Accordingly, McDysan and Paul do not disclose any of the details of such a request as recited, for example, in Claims 2, 3, 17, 20, 21, 35, 38, 39, and 53. Assignee, therefore, submits that Claims 2, 3, 17, 20, 21, 35, 38, 39, and 53 are separately patentable for at least these additional reasons.

Moreover, as each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Assignee does not believe that it is necessary to argue the allowability of each dependent claim individually. Assignee does not necessarily concur with the interpretation of these claims, or with the bases for rejection set forth in the Office Action. Assignee therefore reserves the right to address the patentability of these claims individually as necessary in the future.

**CONCLUSION**

In light of the above amendments and remarks, Assignee respectfully submits that the above-entitled application is now in condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (919) 854-1400.

Respectfully submitted,



D. Scott Moore  
Registration No. 42,011

In re: Thomas Arnold Anschutz, et al.  
Application No.: 10/756,790  
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**USPTO Customer No. 39072**  
AT&T Legal Department – MB  
Attn: Patent Docketing  
Room 2A-207  
One AT&T Way  
Bedminster, NJ 07921

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Kirsten S. Carlos